

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

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| In re Terrorist Attacks on September 11, 2001 | 03 MDL 1570 (GBD/FM) |
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This document relates to: Estate of John P. O'Neill, Sr., et al. v. The Republic of Iraq, et al., 04-CV-1076 (GBD)

**AFFIDAVIT IN SUPPORT OF REQUEST TO CLERK OF COURT FOR ENTRY OF
DEFAULT AND CLERK'S CERTIFICATE OF DEFAULT**

STATE OF NEW YORK)
)
) ss.:
COUNTY OF NEW YORK)

JERRY S. GOLDMAN, Esquire, being duly sworn, deposes and says:

1. I am a partner at Anderson Kill P.C., attorneys for the O'Neill Plaintiffs in the above actions. I am familiar with the facts and circumstances of this case and admitted to practice in this Court.
2. Pursuant to Local Civil Rules 55.1 and 55.2(b) of the United States District Court for the Southern District of New York, I make this Affidavit in support of the O'Neill Plaintiffs' Application for the entry of default against the Defendants listed in **Exhibit A**, attached hereto (the "Iraq Publication Defendants") and for a Clerk's Certificate of Default.
3. This is an action to recover damages owed by the Iraq Publication Defendants to the O'Neill Plaintiffs for injuries resulting from the September 11, 2001 terrorist attacks upon the United States (the "September 11th Attacks"). The Iraq Publication Defendants have been sued based on their participation in a conspiracy to

commit acts of international terrorism against the United States, its nationals and allies, of which the September 11th Attacks were a direct, intended and foreseeable product.

4. Jurisdiction of this Court over the Iraq Publication Defendants is based on diversity of the parties, 28 U.S.C. § 1332, and the presence of federal questions, 28 U.S.C. § 1331; the Anti-Terrorism Act, 18 U.S.C. § 2333 *et seq.*; the Air Transportation Safety and System Stabilization Act, Pub. L. 107-42, 115 Stat. 230-242, § 408(b)(1) (Sept. 22, 2001) (reprinted as amended, at 49 U.S.C. § 40101; the Foreign Sovereign Immunities Act, 28 U.S.C. § 1330, 28 U.S.C. §§ 1605(a)(2), (a)(5), and (a)(7); the Alien Tort Claims Act, 28 U.S.C. § 1330; the Torture Victim Protection Act, Pub. L. 102-256, 106 Stat. 73 (reprinted at 28 U.S.C.A. § 1330 note), as well as 28 U.S.C. § 1367.

5. The O'Neill Plaintiffs filed suit against the Iraq Publication Defendants in the action entitled Estate of John P. O'Neill, Sr., *et al.* v. The Republic of Iraq, *et al.*, 04-CV-1076 (GBD), commenced on August 20, 2003 as action number 03-CV-1766 (RBW) in the United States District Court for the District of Columbia and transferred to this Court by the Judicial Panel on Multidistrict Litigation. The O'Neill Plaintiffs' First Amended Complaint was filed September 28, 2004 (04-CV-1076, Docket No. 16). The Iraq Publication Defendants were served as set forth below.

6. On September 16, 2004, the Honorable Richard C. Casey issued an Order permitting certain Plaintiffs in this multi-district litigation to serve certain Defendants by publication (the "Publication Order"). The O'Neill Plaintiffs were not named in the original Publication Order but were added to it by Judge Casey upon counsel's request. See Endorsed Letter from Jerry S. Goldman to Honorable Richard

C. Casey, October 8, 2004 (03-MD-1570, Docket No. 488) (adding Estate of John P. O'Neill, Sr., *et al.* v. The Republic of Iraq, *et al.*, 04-CV-1076 (GBD) to Publication Order).¹

7. The O'Neill Plaintiffs effectuated service of the First Amended Complaint by publication on the Iraq Publication Defendants listed in **Exhibit A** according to the requirements of the Publication Order. Proofs of such service are attached to the Affidavit of Service filed by the O'Neill Plaintiffs in this action on October 31, 2014. See 03-MD-1570, Docket No. 2908.

8. The Iraq Publication Defendants have failed to answer or otherwise defend against this action, and the time for the Publication Defendants to answer or otherwise defend against this action has expired.

9. The Iraq Publication Defendants are not infants, in the military, or incompetent persons.

10. Attached hereto as **Exhibit B** is a proposed Clerk's Certificate of Default certifying the default of the Iraq Publication Defendants.

¹ References to the Publication Order incorporate this endorsed letter as though it was part of the original Publication Order.

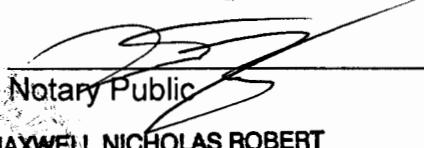
WHEREFORE, the Plaintiffs in Estate of John P. O'Neill, Sr., et al. v. The Republic of Iraq, et al., 04-CV-1076 (GBD), respectfully request the entry of default against the defendants listed in **Exhibit A**.

Dated: November 25, 2014
New York, NY



Jerry S. Goldman, Esquire
ANDERSON KILL P.C.
1251 Avenue of the Americas
42nd Floor
New York, NY 10020

Sworn to before me this 25th
Day of November, 2014.



Notary Public

MAXWELL NICHOLAS ROBERT
NOTARY PUBLIC, State of New York
No. 02MA6260569
Qualified in King County
Commission Expires April 30, 2016